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**Section 9.3**

**RIGHT OF WAY RECORDS MANAGEMENT**

**TABLE OF CONTENTS**

PURPOSE ..... 9-3-1

AUTHORITY ..... 9-3-1

SCOPE ..... 9-3-1

REFERENCES ..... 9-3-1

FORMS ..... 9-3-1

DEFINITIONS ..... 9-3-1

9.3.1 Right of Way Records Filing System ..... 9-3-2

9.3.2 Retention Schedule..... 9-3-2

9.3.3 Employee/Agent Responsibilities..... 9-3-2

9.3.4 Social Security Numbers..... 9-3-2

9.3.5 Appraisals, Offers, and Counteroffers..... 9-3-3

9.3.6 Title Information ..... 9-3-4

9.3.7 Construction Plans..... 9-3-4

9.3.8 Business Records Provided to the Department..... 9-3-4

HISTORY ..... 9-3-4

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## Section 9.3

### RIGHT OF WAY RECORDS MANAGEMENT

#### PURPOSE

The purpose of this section is to establish the process the Guam Department of Public Works Office of Right of Way (Department) must follow to maintain right of way records including information that is exempt from inspection, examination, and duplication.

#### AUTHORITY

23, CFR, Part 710.201  
5 GCA, Chapter 20, Article 6, Records Management Act

#### SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel records management functions and the Office of the Attorney General (OAG) Counsel, Department of Land Management (DLM) Offices of Surveying and Mapping.

#### REFERENCES

5 GCA, Chapter 32, Article 7, Social Security Number Confidentiality Act  
Right of Way Manual, Section 5.5, Legal Documents and Land Acquisition Closing  
Right of Way Manual, Section 9.4, Right of Way Project Closing

#### FORMS

5.6-3 Request for Taxpayer Identification Number  
9.3-1 Request for Vendor Identification Number

#### DEFINITIONS

**Commercial Activity:** An activity that provides a product or service that is available from a private source.

**Custodian:** The official responsible for maintaining right of way records. The Director, Department of Public Works (DDPW), is the custodian for Department records.

**Exempt Records/Information:** Exempt records are records that include (1) social security numbers, (2) appraisals, agent price estimates, and other reports relating to value, offers, counteroffers, and all title information including names and addresses of property owners whose property is subject to acquisition by purchase or through the power of eminent domain, until such time as a purchase agreement has been conditionally accepted by the Department or at the conclusion of condemnation proceedings, (3) construction plans maintained in right of way records depicting structures, such as bridges, causeways, approaches, etc., and (4) business information provided by the owner of a business as part of an offer to settle business damages if the owner requests in writing that the information be held exempt.

**Legitimate Business Purposes:** Legitimate business purposes for a commercial entity requesting social security numbers includes verification of the accuracy of personal information received by a commercial entity in the normal course of business and for use in civil, criminal or administrative proceeding; for insurance purposes; for use in law enforcement in the

investigation of crimes; for use in identifying and preventing fraud; for use in matching, verifying or retrieving information and for research activities.

**Official Parcel Files:** The files containing all records pertaining to valuation, negotiation, acquisition, relocation, condemnation, and property management activities associated with each individual right of way parcel.

**Official Project File:** The file containing general project information that is not parcel specific.

**Public Records:** All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material regardless of the physical form, characteristics or means of transmission made or received pursuant to law or ordinance, or in connection with the transaction of official business by any agency.

**Redaction:** The careful editing of a document to remove protected information such as social security numbers.

**Verified Written Request:** A document verified signed or executed by a person stating under oath or affirming that the facts or matters stated or recited in the document are true or verified by written declaration.

### 9.3.1 Right of Way Records Filing System

**9.3.1.1** The Department shall establish and maintain official project and parcel files in a manner that provides that all records are accessible for review, inspection and/or copying upon **72 hours** notice.

### 9.3.2 Retention Schedule

**9.3.2.1** The following documents must be maintained permanently in the Departments official parcel file:

- (A) All copies of original executed deeds, perpetual easements, and temporary easements;
- (B) Copies of Orders of Taking, Petitions, Certificates of Deposit, Final Judgments, and all other court orders pertaining to eminent domain actions, and
- (C) Title insurance policies.

**9.3.2.2.** All information contained in project and parcel files shall be retained for **three years** following either the date of the final voucher to the Federal Highway Administration (FHWA) for projects with Federal aid in Right of Way or the closing of the project as defined in **Section 9.4, Right of Way Project Closing**. Following the mandatory retention period, documents other than those identified in **Section 9.3.2.1** can be destroyed after scanning.

### 9.3.3 Employee/Agent Responsibilities

**9.3.3.1** All exempt records/information as defined in this section shall be maintained as confidential by all Department employees or agents of the Department until disclosure of such information is authorized by the department of Public Works Right of Way Supervisor (DPWRS) or is otherwise subject to disclosure under the law.

**9.3.3.2** Disclosure of exempt records/information may subject the employee or agent who discloses the exempt records/information to criminal penalties under the law. If a question arises the OAG Counsel should be contacted for advice.

### 9.3.4 Social Security Numbers

**9.3.4.1** All social security numbers held by the Department, its agents or contractors, are confidential and exempt from disclosure under **5 GCA, Chapter 32, Article 7**, except as provided for in **Sections 9.3.4.7** and **9.3.4.8** of this **Manual**.

**9.3.4.2** Social security numbers shall not be collected by the Department except when provided as part of the records substantiating a business damage claim when provided as part of the records verifying income relating to a relocation assistance claim, or when needed for Guam Internal Revenue Service reporting and/or for use in identifying payees as vendors. Social security numbers shall not be collected for any other purposes.

**9.3.4.3** Social security numbers other than those provided as part of a business damage claim or for the purpose of verifying income relating to a relocation assistance claim, shall be collected using either **Form No. 5.6-3, Request for Tax Payer Identification Number**, or **Form No. 9.3-1, Request for Vendor Identification Number**. **Form No. 5.6-3** will be used to collect taxpayer identification numbers from persons receiving payments for real estate and real estate damages. All other taxpayer identification numbers collected to identify payees for items such as payments for business damages, fees and costs, goods or services provided as a vendor directly to the Department, relocation assistance payments to non-property owner displacees, or closing costs shall be collected using **Form No. 9.3-1**.

**9.3.4.4** Prior to requesting **Form No. 9.3-1, Request for Vendor Identification Number**, the Department should verify whether the payee has a current vendor identification number. If a vendor number exists, no form is required.

**9.3.4.5** Social security numbers shall be included only on the following right of way forms: **Form No. 5.6-3, Request for Tax Payer Identification Number**, **Form No. 9.3-1, Request for Vendor Identification Number**.

**9.3.4.6** The Department may redact social security numbers from title searches, original business records provided by a business owner, or relocation income verification records provided by a relocatee at the time such records are received in the Department and maintain those records as is customary in the Department.

**9.3.4.7** Pursuant to **5 GCA, Chapter 32, Article 7**, social security numbers contained in any document maintained in Department records must be redacted prior to making the document available for inspection, examination or duplication pursuant to a public records request.

**9.3.4.8** Social security numbers may be disclosed to another governmental entity or its agents, employees or contractors if disclosure is necessary for the receiving entity to perform its duties or responsibilities. Documents containing social security numbers may also be provided to consultants under contract to the Department when those documents are necessary for the consultant to conduct the activity contracted for by the Department.

**9.3.4.9** Social security numbers may be disclosed to a commercial entity engaged in the performance of a commercial activity provided the social security numbers will be used only in the normal course of business for legitimate business purposes. In order to obtain social security numbers held by the Department, a commercial entity must provide the Department a verified written request signed by an authorized officer, employee or agent of the commercial entity. The verified written request must contain the name of the commercial entity, business mailing and location addresses, business telephone numbers, a statement of the specific purposes for which the business entity needs the social security numbers, and how the social security numbers will be used in the normal course of business for legitimate business purposes. A legitimate business purpose does not include the display or bulk sale of social security numbers to the general public or the distribution of such numbers to any customer that is not identifiable by the business entity.

**9.3.4.10** All requests for social security numbers received by the Department pursuant to this section must be forwarded to the DPWRS for approval prior to the Department providing the requested social security numbers.

### **9.3.5 Appraisals, Offers, and Counteroffers**

All appraisals, agent price estimates and other reports relating to value, offers, and counteroffers must be maintained as confidential and exempt from public records requests, until such time as a purchase agreement is conditionally accepted by the Department or condemnation proceedings are concluded, at which time the exemption will expire. This does not affect the

rights of fee owners and business owners or their representatives who request a copy of the appraisal report upon which the offer to the fee owner is based, or through discovery in an eminent domain action. Appraisals, agent price estimates, and other reports relating to value, offers and counteroffers may be provided to consultants under contract to the Department when necessary for the consultant to conduct the activity contracted for by the Department.

### **9.3.6 Title Information**

The Department may exempt title information including names and addresses of property owners whose property is subject to acquisition by purchase or through the power of eminent domain. Title information must be maintained as confidential, until such time as when a purchase agreement is conditionally accepted by the Department or condemnation proceedings are concluded. This does not affect the rights of landowners or their representatives who request this information through discovery in an eminent domain action. Title information may be provided to consultants under contract to the Department when necessary for the consultant to conduct the activity contracted for by the Department.

### **9.3.7 Construction Plans**

Any inspection, examination or duplication of construction plans maintained in right of way records except those provided pursuant to a request by a landowner or landowner's representative, business owner or business owner's representative, or through discovery in an eminent domain action, must comply with the Department's standard procedure.

### **9.3.8 Business Records Provided to the Department**

**9.3.8.1** Business records as described in **Section 5.9 Business Damages**, provided to the Department as part of an offer of business damages, shall be maintained as confidential and exempt from public records requests, when the person providing such records requests in writing that the records be held confidential and exempt.

**9.3.8.2** The Department may allow an agency, to inspect and copy business records/information made confidential and exempt from disclosure provided the information will be used exclusively for the transaction of official business of the receiving agency.

**9.3.8.3** The Department may offer business records/information made confidential and exempt from disclosure as evidence in any legal proceeding.

## **HISTORY**

Original Issue Date: 2009



The Honorable  
**Felix P. Camacho**  
Governor

The Honorable  
**Michael W. Cruz, M.D.**  
Lieutenant Governor



DPW Form 9.3-1

### Request for Vendor Identification Number

ITEM/SEGMENT NO.: \_\_\_\_\_  
F.A.P. NO.: \_\_\_\_\_  
ROUTE NO.: \_\_\_\_\_  
PARCEL NO.: \_\_\_\_\_

Dear

The Territory of Guam Department of Public Works will be processing a payment to you related to the above referenced right of way parcel. In order to process your payment, the Department requires your federal taxpayer identification number (TIN). If you do not provide your TIN we cannot process your payment. Your TIN will be your social security number for individuals, or your employer identification number for entities.

Please provide the following information:

Full Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Social Security Number: \_\_\_\_\_ or

Employer Identification Number \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**CONFIDENTIAL**